LIBRARY
SUPREME COURT, U. S.

No. 73-734

FILED
FEB 4 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

JOSEPH RAYMOND GOMEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-734

JOSEPH RAYMOND GOMEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Colorado, petitioner was convicted on one count of distributing heroin and aiding and abetting in the same, in violation of 18 U.S.C. 2 and 21 U.S.C. 841(a)(1).[1] He was sentenced to five years' imprisonment, to be followed by a special parole term of three years. The court of appeals affirmed (Pet. App. A).

[1] Petitioner was acquitted on a second count charging him with the same offenses in connection with a different incident.

Petitioner contends that it was prejudicial and reversible error to deny him access, after a motion for pretrial discovery pursuant to Fed. R. Crim. P., Rule 16, to an investigative summary of petitioner's actions which the government had. The material was subsequently given to petitioner prior to trial pursuant to 18 U.S.C. 3500. Petitioner also contends that, since faulty recording equipment prevented him from obtaining the transcript of his preliminary hearing, it was reversible error to deny him a second preliminary hearing, even though he was indicted by a grand jury subsequent to the original hearing. These contentions were thoroughly examined and properly rejected by the court of appeals (Pet. App. A), in an opinion on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 531547 163